

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:16-CV-701-DCK**

MARSHALL O. LOWERY,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

THIS MATTER IS BEFORE THE COURT on the “The United States Of America’s First Motion For Leave To Take More Than Ten Fact Witnesses and To Extend Discovery Deadlines and Entry Of a Modified Case Management Order” (Document No. 15) filed June 12, 2017. The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and this motion is now ripe for disposition. Having carefully considered the motion and the record, the undersigned will grant the motion, with modification.

By the instant motion, Defendant seeks to increase the number of depositions it is allowed to take of fact witnesses from 10 to 26. (Document Nos. 15 and 15-1). In the alternative, Defendant requests that it be allowed 85 hours to take any deposition it deems necessary. Id.

The crux of Defendant’s request to modify the discovery plan is that at issue in this case are 25 individual penalties assessed pursuant to 26 U.S.C. § 6694(b). (Document No. 15-1, p.2). According to Defendant, the penalties are assessed on a per return basis, and apply to the tax preparer who prepares a return that understates liability. Id. Defendant contends this case essentially consists of 25 micro-cases pulled into one proceeding that involves 16 third-party customers whose income tax returns were prepared by 10 return preparers, including Plaintiff. Id.

As such, Defendant asserts that it must be allowed to depose each third-party customer and each return preparer. Id.

Defendant further represents that most of the proposed depositions can be conducted in about one (1) hour, and several can be completed on one day in Charlotte, North Carolina – where Plaintiff and his counsel are located. (Document No. 15-1). Defendant recognizes that it is currently allowed to take 10 depositions over a total of 70 hours, but proposes that it now be allowed to take 26 depositions over 82 hours, or in the alternative a total of 85 hours for all depositions. (Document No. 15-1, p.5).

Plaintiff opposes Defendant's motion. (Document No. 17). Plaintiff essentially argues that Defendant's request is inconsistent with the parties' discussions at the initial attorney's conference and that the request is not proportional to the needs of the case. Moreover, Plaintiff contends that extension of the deadlines will result in hardship and prejudice for Plaintiff.

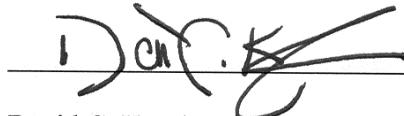
The undersigned recognizes Plaintiff's concerns, and is not entirely persuaded Defendant should not have foreseen this issue; nevertheless, it appears to be in the best interests of justice and efficient case management to allow the pending motion, with modification. Specifically, Defendant will be allowed to take **up to 26 depositions over a total of 70 hours**. Moreover, Defendant shall work diligently to accommodate Plaintiff's convenience by among other things holding the proposed depositions in Charlotte, North Carolina and scheduling as many depositions consecutively as is efficient for all counsel.

In addition, the undersigned will extend the case deadlines; however, if the parties are able to work together and complete discovery ahead of schedule, the Court will consider a motion by Plaintiff to revise the deadlines again. The new case deadlines are as follows: discovery

completion – **November 6, 2017**; mediation report – **November 28, 2017**; dispositive motions – **December 8, 2017**; trial ready date – **April 2, 2018**.

IT IS, THEREFORE, ORDERED that the “The United States Of America’s First Motion For Leave To Take More Than Ten Fact Witnesses and To Extend Discovery Deadlines and Entry Of a Modified Case Management Order” (Document No. 15) is **GRANTED with modification**, as directed herein.

Signed: July 7, 2017



David C. Keesler
United States Magistrate Judge

